

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BISMARK GUITIERREZ,

Petitioner,

v.

JOSEPH MURPHY,

Respondent.

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) **Civil Action No.**
) **17-10557-FDS**
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ORDER ON CERTIFICATE OF APPEALABILITY

SAYLOR, J.

On December 20, 2010, Bismark Guitierrez was convicted in the Superior Court of two counts of armed assault with intent to murder and one count of unlawful possession of a firearm. On January 3, 2011, he was sentenced to a term of imprisonment of 8 to 12 years on one count of armed assault and probation of 5 years on the other count of armed assault. In addition, he was sentenced to a term of imprisonment of 4 to 5 years on the count of unlawful possession of a firearm. The prison terms were to be served concurrently with a sentence Guitierrez was already serving on an unrelated conviction.

After exhausting his appeals in the state courts, he petitioned for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on April 13, 2017. This Court dismissed the petition as time-barred on November 27, 2017. He has since filed a motion for reconsideration and a motion to vacate the Court's dismissal of his petition. In those motions, petitioner appears to seek a certificate of appealability ("COA").

A COA will issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In the First Circuit, "the necessity for a substantial

showing extends independently to each and every issue raised by a habeas petitioner.” *Bui v. DiPaolo*, 170 F.3d 232, 236 (1st Cir. 1999). When the district court has rejected a constitutional claim on the merits, a COA will issue only if the petitioner “demonstrate[s] that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the district court has denied a habeas petition on procedural grounds, the petitioner must show that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.*

That standard has not been satisfied here. The Court concludes that jurists of reason would not find it debatable that the claim is time-barred.

Accordingly, a certificate of appealability is DENIED as to all claims.

So Ordered.

Dated: January 2, 2018

s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge